

DECISION IN THE MATTER OF VERA GANEYEVA (KARMISHINA) (“ATHLETE”)

1 FACTUAL BACKGROUND

- 1.1. On 16 July 2016 and 9 December 2016, Prof. Richard McLaren published two reports into allegations of a systemic doping scheme in Russia (the First¹ and Second McLaren Reports², together the “McLaren Reports”). In the McLaren Reports, Prof. McLaren made findings with respect to the scheme and concluded that Russian athletes had been protected over the course of years. In other words, a vast number of positive samples had been officially reported as negative. The three main counter-detection methodologies which were used in Russia, at least between 2011 and 2015, were the so-called (i) Disappearing Positives Methodology (“DPM”)³, (ii) the Sample Swapping Methodology⁴ and (iii) Washout Testing⁵.
- 1.2. On 30 October 2017, the World Anti-Doping Agency (“WADA”) Intelligence & Investigations Department (“WADA I&I”) secured from a whistleblower a copy of the Laboratory Information Management System (“LIMS”) data of the Moscow Laboratory for the years 2011 to August 2015 (the “2015 LIMS”).
- 1.3. The LIMS is a system that allows a laboratory to manage a sample through the analytical process and the resultant analytical data. Conceptually, the LIMS is a warehouse of multiple databases organized by year. The most relevant anti-doping data within the LIMS are those related to sample reception, analysis, and the actions of users within the system. This pertinent data is housed in key tables including: “bags”, “samples”, “screening”, “found” (or “scr_results” prior to 2013), “confirmation”, “MS_data” (or “Pro_4” prior to 2013) and “pdf”.
- 1.4. Subsequently, as part of the reinstatement process of the Russian Anti-Doping Agency (“RUSADA”), WADA required that *inter alia* authentic analytical data from the Moscow Laboratory for the years 2012 to 2015 be provided. Access to the Moscow Laboratory was therefore given to a team of WADA-selected experts, who were allowed to remove

¹ <https://www.wada-ama.org/en/resources/doping-control-process/mclaren-independent-investigation-report-part-i>

² <https://www.wada-ama.org/en/media/news/2016-12/wada-publishes-independent-mclaren-investigation-report-part-ii>

³ Where the initial testing procedure of a sample revealed a Presumptive Adverse Analytical Finding the athlete would be identified, and the Russian Ministry of Sport would decide either to “SAVE” or to “QUARANTINE” the athlete in question. The instruction would typically be sent by email; however, at times, “SAVE” instructions were also known to be given by other means than email, eg. orally or by text message and certain athletes were automatically protected without the need for any instruction. If the instruction was “SAVE”, the analysis of the sample would stop and the Moscow Laboratory would report the sample as “negative” in ADAMS.

⁴ The Sample Swapping Methodology involved the replacing of “dirty” urine with “clean” urine by removing and replacing the cap on sealed B sample bottles. This was facilitated by the establishment and maintenance of a “Clean Urine Bank” at the Moscow Laboratory.

⁵ The Washout Testing was developed in order to determine whether the athletes on a doping program were likely to test positive. The results of the Washout Testing were at times recorded in documents, such as the London Washout Schedules in the lead-up to the 2012 London Olympic Games or the Moscow Washout Schedule in the lead-up to the 2013 IAAF World Championships. Even when the samples screened positive, they were automatically reported as negative in ADAMS. See page 23 and 72 of the Second McLaren Report.

data from the Moscow Laboratory, including another copy of the LIMS data for the relevant years (the “2019 LIMS”) as well as the underlying analytical PDFs and raw data of the analyses reported in the LIMS (the “Analytical Data”). The analytical PDFs are automatically generated from the instruments and contain the chromatograms, which demonstrate whether a substance is present or not in a given sample.

- 1.5. Further investigations were conducted by WADA I&I in collaboration with forensic experts from the University of Lausanne on the data retrieved from the Moscow Laboratory and evidence of manipulation of the 2019 LIMS was uncovered, in particular, to remove positive findings contained in the LIMS. On that basis, WADA I&I concluded that the 2015 LIMS was reliable (and the 2019 LIMS was not). WADA I&I also identified evidence of deletions/alterations of Analytical Data to remove evidence of positive findings prior to WADA’s retrieval mission in January 2019.⁶
- 1.6. In the present case, the 2015 LIMS data and the Analytical Data show that one of the Athlete’s samples contained prohibited substances and was not reported as positive as part of the Russian manipulation scheme. More particularly:

Sample 2690812

- 1.6.1. On 4 July 2012, the Athlete was subject to an in-competition urine doping control. The 2015 LIMS indicates that boldenone, oxandrolone, dehydrochloromethyltestosterone (“DHCMT”) and desoxymethyltestosterone were found in this sample.
- 1.6.2. Boldenone, DHCMT, desoxymethyltestosterone and oxandrolone are exogenous anabolic steroids prohibited under S1.1.a of the 2012 WADA Prohibited List.
- 1.6.3. The sample was reported negative by the Moscow laboratory.

2 PROCEDURAL BACKGROUND

- 2.1. On 30 June 2022, the Athlete was notified of the potential anti-doping rule violation and of her right to provide explanations by 10 July 2022 or to admit the potential anti-doping rule violation *inter alia*.
- 2.2. On 30 June 2022, the Athlete asked to be contacted by a Russian-speaking representative. On the same day, the Athletics Integrity Unit (“AIU”) provided the Athlete with the contact details of the Head of the Anti-Doping and Integrity department of the Russian Athletics Federation. The AIU did not receive any further correspondence from the Athlete.

⁶ See in particular CAS 2020/O/6689, para. 614: “*The Panel finds that, prior to the Moscow Data being retrieved by WADA in January 2019, and during its retrieval, it was subjected to deliberate, sophisticated and brazen alterations, amendments and deletions. Those alterations, amendments and deletions were intentionally carried out in order to remove or obfuscate evidence of improper activities carried out by the Moscow Laboratory as identified in the McLaren Reports or to interfere with WADA’s analysis of the Moscow Data*”.

- 2.3. As a result, on 3 November 2022, the AIU noted that the Athlete had not provided any explanations within the deadline and maintained its assertion that she had committed an anti-doping rule violation. The Athlete was granted an opportunity to request a hearing by 17 November 2022. The Athlete was specifically informed that, if she failed to request a hearing, she would be deemed to have waived her right to a hearing and to have accepted the asserted anti-doping rule violation, and that the AIU would render a decision confirming the imposition of the consequences set out in the letter.
- 2.4. On 8 November 2022, the Athlete sent two emails to the AIU essentially denying any intentional wrongdoing and stating that she had already been subjected to two trials on these issues in the past.
- 2.5. On 21 November 2022, the AIU send an email to the Athlete asking her to clarify by 25 November 2022 the latest whether she did or did not request a hearing, failing which the AIU would render a decision confirming the imposition of the consequences set out at section 4 of the 3 November 2022 letter (i.e., disqualification and public disclosure).
- 2.6. The Athlete did not respond to the 21 November 2022 email.
- 2.7. On 13 February 2023, exceptionally, the AIU set a final deadline for the Athlete to request a hearing, failing which the AIU would render a decision confirming the imposition of the consequences set out at section 4 of the 3 November 2022 letter (i.e., disqualification and public disclosure).
- 2.8. The 13 February 2023 email remained unanswered as well.

3 REASONED DECISION

A) Applicable Rules

- 3.1. Pursuant to Rule 1.7.2(b) of the 2021 World Athletics⁷ Anti-Doping Rules (“WA ADR”), anti-doping rule violations committed prior to 1 January 2021 shall be governed by the substantive Anti-Doping Rules in effect at the time the alleged anti-doping rule violation occurred and, with respect to procedural matters, by the 2016-2017 IAAF Competition Rules (the “2016 IAAF Competition Rules”) for anti-doping rule violations committed prior to 3 April 2017.
- 3.2. As the Athlete’s anti-doping rule violation occurred in 2012, it is governed by the rules in force at the time of its commission, viz. the 2012-2013 IAAF Competition Rules (the “IAAF Competition Rules”).

B) Anti-Doping Rule Violation

- 3.3. Per Rule 32.2(b) of the IAAF Competition Rules, the Use of Prohibited Substances constitutes an anti-doping rule violation. The provision adds the following:

⁷ Previously the International Association of Athletics Federations (“IAAF”).

“(i) it is each Athlete’s personal duty to ensure that no Prohibited Substance enters his body. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.

(ii) the success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used, or Attempted to be Used, for an antidoping rule violation to be committed.”

- 3.4. Use within the meaning of Rule 32.2(b) of the IAAF Competition Rules can be established “*by any reliable means, including but not limited to admissions, evidence of third Persons, witness statements, experts reports, documentary evidence, conclusions drawn from longitudinal profiling and other analytical information*” (Rule 33.3 of the IAAF Competition Rules).
- 3.5. In the present case, the 2015 LIMS data and underlying Analytical Data show that boldenone, DHCMT, desoxymethyltestosterone and oxandrolone were detected in a sample collected from the Athlete in 2012. This clear and reliable evidence shows that the Athlete used Prohibited Substances in 2012 in breach of Rule 32.2(b) of the IAAF Competition Rules.
- 3.6. In addition, the AIU notes that, when confronted with the anti-doping rule violation, the Athlete did not provide any explanation for it. In addition, having failed to request a hearing, the Athlete was deemed to have accepted the anti-doping rule violation.
- 3.7. In view of the above, it is clear that the Athlete committed an anti-doping rule violation in breach of Rule 32.2(b) of the IAAF Competition Rules in 2012.

C) Applicable Consequences

- 3.8. By way of background, the AIU notes that the Athlete was previously sanctioned for a first violation involving DHCMT⁸, giving rise to a period of Ineligibility of two years from 2 July 2016 to 1 July 2018 (with Disqualification of results from 3 August 2012 until 2 August 2014), and an additional period of Ineligibility of two years from 2 July 2018 to 1 July 2020 (with Disqualification of results from 25 July 2012 until 2 August 2012)⁹ (together the “**First Violation**”).

a. Period of Ineligibility

- 3.9. Per Rule 40.7(d) of the IAAF Competition Rules, “[f]or the purposes of imposing sanctions under Rule 40.7, an anti-doping rule violation will only be considered a

⁸ The sample was collected on 3 August 2012.

⁹ The increased period of Ineligibility and additional period of disqualification was imposed, in particular, based on a sample of the Athlete collected on 25 July 2012 recorded in the London Washout Schedules as containing DHCMT and two samples from 14 and 25 July 2013 recorded in the Moscow Washout Schedules as containing 4-OH-Testosterone. These additional violations were considered as a single first violation together with the First Violation.

second violation if it can be established that the Athlete or other Person committed the second anti-doping rule violation after the Athlete or other Person received notice pursuant to Rule 37 (Results Management) or after reasonable efforts were made to give notice of the first anti-doping rule violation; if this cannot be established, the violations shall be considered together as one single first violation and the sanction imposed shall be based on the violation that carries the more severe sanction; however, the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances (Rule 40.6)."

- 3.10. In the present case, the Athlete committed the additional 2012 anti-doping rule violation on 4 July 2012, i.e. prior to any of her other samples which give rise to a sanction. Therefore, the present violation cannot count as a second violation for the purposes of Rule 40.7(d) of the IAAF Competition Rules and shall be considered as a single first violation together with the First Violation.
- 3.11. To determine the applicable sanction, the applicable rules indicate that, where multiple violations are to be considered together, *"the sanction imposed shall be based on the violation that carries the more severe sanction"*.
- 3.12. The Athlete already received a total four-year sanction for the First Violation. The present violation cannot be subject to a more severe sanction. As a result, no additional period of Ineligibility can be imposed on the Athlete for the present violation.

b. Disqualification

- 3.13. Per Rule 40.8 of the IAAF Competition Rules, *"[i]n addition to the automatic disqualification of the results in the Competition which produced the positive sample under Rules 39 and 40, all other competitive results obtained from the date the positive Sample was collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred through to the commencement of any Provisional Suspension or Ineligibility period shall be Disqualified with all of the resulting Consequences for the Athlete including the forfeiture of any titles, awards, medals, points and prize and appearance money."*
- 3.14. In the present case, the first evidence of the Athlete's anti-doping rule violation was on 4 July 2012. As a result, per Rule 40.8 of the IAAF Competition Rules, all results obtained by the Athlete from 4 July 2012 until 2 July 2016 (i.e. until the start of her period of Ineligibility for the First Violation) - excluding the results already disqualified by way of her First Violation from 25 July 2012 until 2 August 2014 - must be disqualified. The AIU sees no reasons of fairness justifying otherwise given the severity of the violations committed by the Athlete. In addition, the Athlete has not even sought to argue that the fairness exception should apply.

D) Dispositive

3.15. In view of all the above, the following decision is hereby rendered (with binding effect on all Signatories to the World Anti-Doping Code, in all sports and countries as per Code Article 15):

3.15.1. The Athlete is found to have committed an additional anti-doping rule violation under Rule 32.2(b) of the IAAF Competition Rules in 2012;

3.15.2. All competitive results obtained by the Athlete from 4 July 2012 until 2 July 2016 are disqualified (excluding those results already disqualified by way of the Athlete's previous sanction), with all of the resulting consequences, including forfeiture of any medals, titles, points, prize money and prizes.

3.16. The disposition of the matter will be Publicly Disclosed in accordance with Rule 43 of the 2016 IAAF Competition Rules.

3.17. This decision is subject to appeal under Rule 42 of the 2016 IAAF Competition Rules.

Monaco, 25 May 2023